



21

PRESTON GATES ELLIS &
ROUVELAS MEEDS LLP
ATTORNEYS

STANLEY M. GORINSON
DIRECT DIAL: (202) 662-8408

DOCKET FILE COPY ORIGINAL

January 31, 1997

RECEIVED

JAN 31 1997

Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Access Charge Reform, *et al.* (CC Docket
Nos. 96-262, 94-1, 91-213, and 96-263)

Dear Mr. Caton:

Please find enclosed for filing the original and sixteen (16) copies of the Microsoft Corporation's Amended Comments in this proceeding. These copies replace Microsoft's original filing of January 29, 1997, which attached the wrong exhibit. I apologize for any inconvenience this may have caused.

If you have any questions or need any additional information please feel free to contact me.

Sincerely yours,

Stanley M. Gorinson

Enclosure

No. of Copies rec'd
List ABCDE

0116

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

RECEIVED

JAN 31 1997

Federal Communications Commission
Office of Secretary

IN THE MATTER OF)

ACCESS CHARGE REFORM)

PRICE CAP PERFORMANCE REVIEW
FOR LOCAL EXCHANGE CARRIERS)

TRANSPORT RATE STRUCTURE
AND PRICING)

USAGE OF THE PUBLIC SWITCHED
NETWORK BY INFORMATION SERVICE
AND INTERNET ACCESS PROVIDERS)

CC Docket No. 96-262

CC Docket No. 94-1

CC Docket No. 91-213

CC Docket No. 96-263

AMENDED
COMMENTS OF MICROSOFT CORPORATION
IN RESPONSE TO THE COMMISSION'S
NOTICE OF PROPOSED RULEMAKING

Jack Krumholtz
Law and Corporate Affairs Department
Microsoft Corporation
Suite 600
5335 Wisconsin Ave., N.W.
Washington, D.C. 20015

Stanley M. Gorinson
William H. Davenport
Preston Gates Ellis & Rouvelas Meeds
1735 New York Ave., N.W.
Washington, D.C. 20006

Attorneys for Microsoft Corporation

January 31, 1997
(original filed January 29, 1997)

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

RECEIVED

JAN 31 1997

*Federal Communications Commission
Office of Secretary*

IN THE MATTER OF

ACCESS CHARGE REFORM

**PRICE CAP PERFORMANCE REVIEW
FOR LOCAL EXCHANGE CARRIERS**

**TRANSPORT RATE STRUCTURE
AND PRICING**

**USAGE OF THE PUBLIC SWITCHED
NETWORK BY INFORMATION SERVICE
AND INTERNET ACCESS PROVIDERS**

)
)
)
) **CC Docket No. 96-262**
)
) **CC Docket No. 94-1**
)
) **CC Docket No. 91-213**
)
) **CC Docket No. 96-263**
)
)
)

***AMENDED*
COMMENTS OF MICROSOFT CORPORATION**

Microsoft Corporation (Microsoft) submits these limited comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) released on December 24, 1996.¹ Microsoft applauds the Commission's tentative conclusion that information service providers should not be required to pay interstate access charges. The Commission has correctly observed that imposing access charges on information service providers could dramatically retard the growth of this still-developing industry. Moreover, any such imposition of charges would be inconsistent with the deregulatory thrust of the Telecommunications Act of 1996 (the 1996 Act).

¹ Microsoft is a member of the Internet Access Coalition (IAC) and joins substantially in the views expressed in the IAC's comments also filed today.

For the same reasons, however, Microsoft opposes the Commission's proposal to raise or eliminate the cap on the Subscriber Line Charge (SLC) for residential connections beyond the primary connection. As we explain below, this proposal contradicts the deregulatory and pro-competitive intent of the 1996 Act and could have a significant disparate impact on the information services industry, a result the Commission clearly wishes to avoid.

Microsoft also reaffirms its belief that the Commission should utilize a per-facility approach in assessing SLCs on Integrated Services Digital Network ("ISDN") services and other derived-channel technologies. As Microsoft stated in its comments in response to the Commission's Notice of Proposed Rulemaking in the *ISDN SLC NPRM*,² ISDN is an interim technology that is an important building block in the development of the information services industry and the realization of the benefits those services offer. If the Commission adopts any other method of assessing the SLC on ISDN it could price the technology beyond the reach of virtually all consumers.

Moreover, before imposing any SLC rate structure or cap for ISDN or similar services, the Commission should obtain an objective, third-party analysis of the non-traffic sensitive costs generated by such services. Without an independent assessment of the actual economic costs created by these services, the Commission should err on the side of caution and forbear the imposition of any additional fees.

² End User Common Line Charges, CC Docket No. 95-72, Notice of Proposed Rulemaking, 10 FCC Rcd. 8565 (1995).

DISCUSSION

The current access charge regime is sorely in need of reform. The enactment of the 1996 Act, together with changes in the telecommunications and related industries, has brought into sharp relief the inefficiencies and anti-competitive nature of the present system. In order to correct these defects, the new system of access charges must be pro-competitive, forward-looking, and driven by market forces rather than government regulation. Moreover, in the guise of reform the Commission must not extend the regulatory access charge regime or skew marketplace outcomes to slow innovation. Microsoft's comments are based on these fundamental principles.

I. The Commission Correctly Declined To Expand Its Access Charge Regime To Include Information Service Providers.

Microsoft agrees with the Commission's tentative conclusion that information service providers should not be subject to the interstate access charge system. (NPRM ¶288.) As the Commission recognizes, the true economic costs on the public switched network generated by information services and technology are hotly disputed. (¶¶ 286-87.) The purpose of access charge reform as a whole, however, is to make access charges -- to the extent they are required at all -- more accurately reflect those true costs. (¶¶ 41-49.)

Accordingly, as alternatives to the LEC network become available during this transition period, the level and scope of access charges should decline rather than expand. Competition rather than regulation must set the price of access. Imposing access charges on information services, however, would contradict the 1996 Act's goal of eliminating

regulation and encouraging competition. The Commission therefore must be extremely skeptical of the suggested imposition of access charges on any new service or technology.

Indeed, the Commission notes that it has already twice considered and rejected the imposition of access charges on enhanced service providers.³ (¶ 284.) In those decisions, the Commission stated that the enhanced services industry should remain exempt from access charges as long as the industry “remains in the current state of change and uncertainty.”⁴

That point remains true. Although competition in the information service industry is vigorous, the industry as a whole is still evolving. As the Commission observes, usage of interstate information services -- particularly the Internet and other interactive computer networks -- has increased dramatically in recent years. (¶ 282 & n.373.) This growth, however, might be curtailed or even reversed if information service providers are forced to pay interstate access charges. According to the NPRM, “[i]t is extremely likely that, had per-minute interstate access rates applied to ESPs [Enhanced Service Providers] over the past 13 years, the Internet and other information services would not have developed to the extent they have today -- and indeed may not have developed commercially at all.” (¶ 285.) The Commission therefore should adopt its tentative conclusion that information service providers are not subject to the interstate access charge system.

³ See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Order, 3 FCC 2631 (1988) (*ESP Exemption Order*); MTS and WATS Market Structure, Memorandum Opinion and Order, Docket No. 78-72, 97 FCC 2d 682, 711-712 (1983) (*Access Charge Reconsideration Order*).

⁴ *ESP Exemption Order* at ¶¶ 1, 13-17.

II. The Commission Should Not Increase Or Eliminate The Cap On Subscriber Line Charges For Residential Multiple Line Users.

Under the current system of interstate access charges, common line costs for the local loop are recovered through a combination of per-line and per-minute fees paid by consumers. (¶ 57.) According to the Commission, however, these fees may not recover the actual costs to the local loop of end-user customers with multi-line business and multiple-line residential services. (¶ 64.)

The Commission therefore proposes increasing the cap on the flat, per-line charge (known as the "Subscriber Line Charge" or "SLC") for the second and additional lines for residential customers and for all lines for multi-line business customers. (¶ 65.) The new cap would be based on the per-line loop costs assigned to the interstate jurisdiction. Alternatively, the Commission proposes to eliminate the SLC cap altogether for such customers, particularly where the local network is open to competition. (*Id.*)

But the NPRM fails to identify any evidence that the current SLC does not recapture the actual economic cost of the additional lines. Indeed, the Commission acknowledges that cost of local loop access remains uncertain. (*See* ¶¶ 140-240).

Moreover, local exchange competition is in its initial stages, and incumbent LECs could easily increase fees for additional lines in the short term. Since a large percentage of consumers use additional lines for access to information services, however, removing the existing cap on SLCs will have a disparate impact on the cost of using information services. Such a result would be tantamount to imposing access charges on information services -- the same policy that the Commission has expressly declined to impose.

A SLC increase for multiple-line users could substantially reduce demand for information services. These services are -- for the time being -- often a "discretionary" expense for many users. In such cases, users might simply opt to end their service, rather than pay the higher SLC. Consequently, even if competition eventually lowers multiple-line SLCs, many information service providers -- for example, Internet service providers - - may not be around to enjoy it. Accordingly, the existing *cap* on SLCs should not yet be removed for multiple-line residential customers.

III. The Per-Facility Charge Structure Will Best Recover The Cost Of The Local Loop From ISDN And Other Derived Channel Services.

The Commission requests comment on the 1996 Act's impact on the application of SLCs to ISDN and other derived channel services. (¶ 70.) Microsoft believes that the principles underlying the 1996 Act strongly point toward the adoption of a per-facility charge structure for ISDN services. Support for the development of new services and technology was at the heart of the 1996 Act, and ISDN is a key short-term building-block to this progress in the information services industry.⁵ The Commission therefore should adopt the SLC policy that will most encourage ISDN's use -- a per-facility charge structure.⁶

According to the Commission, "ISDN offers data transmission at higher speeds and with greater reliability than standard analog service." (¶ 68.) Because the

⁵ See Microsoft Comments in End User Common Line Charges, CC Docket No. 95-72, Notice of Proposed Rulemaking, 10 FCC Rcd. 8565 (1995) (*ISDN SLC NPRM*), filed June 29, 1995, at 1-2. A copy of these comments is attached as Exhibit 1.

⁶ As stated in these comments, *infra* at 7-8, any such structure should be based on an objective, third-party analysis of the relevant cost data.

information service industry depends heavily on the transmission of an ever-increasing amount of data, as ISDN becomes more available, the industry will continue to grow.

As Microsoft stated in its comments to the *ISDN SLC NPRM*,⁷ the per-facility approach will best encourage the deployment of ISDN, and by extension, the growth of information services.⁸ By contrast, alternatives like the per-line or per-derived channel formulas will discourage the use of ISDN services and ultimately undermine the information services industry. The Commission should therefore adopt the per-facility SLC charge approach.

IV. Before Imposing Any SLC Rate Structure Or Rate Cap On ISDN Or Similar Services, The Commission Should Obtain An Objective, Third-Party Analysis Of The Non-Traffic Sensitive Costs Of Such Services.

In its discussion of the non-traffic sensitive (NTS) costs caused by ISDN and other derived channel services, the Commission cites cost data provided by the Bell Operating Companies (BOCs). (§ 70.) That data is likely to be viewed skeptically by those opposing the BOC's position. Indeed, as the Commission acknowledges throughout its NPRM, estimates of NTS costs remain highly debatable. Given this uncertainty, the Commission should approach any "cost data" provided by any interested parties with extreme caution. Rather than relying on the cost estimates provided by the BOCs themselves, the Commission should have an objective third party analyze the raw

⁷ *Id.*

⁸ "It [the per-facility approach] is most likely to promote the use of ISDN, other derived channel technologies, and ultimately the NII [National Information Infrastructure.]" Microsoft Comments to *ISDN SLC NPRM* at 4.

data according to clearly delineated and competitively neutral criteria.⁹ Such an objective non-partisan study will provide a better regulatory basis for determining a per-facility charge. Until that is accomplished, however, no additional changes in the existing ISDN SLC pricing arrangement should be made.

⁹ See S. Rep. No. 230, 104th Cong., 2d Sess. 131 at 113 (1996) (Joint Explanatory Statement) (purpose of 1996 Act was "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . ."). See also Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (released Nov. 8, 1996) at 16 (embracing principle of competitive neutrality as basis for universal service policy).

CONCLUSION

For the foregoing reasons, Microsoft respectfully recommends: 1) that the Commission adopt its tentative conclusion not to expand access charges to information service providers; 2) leave the SLC for multiple-line users unchanged; 3) use a per-facility approach towards the SLC for ISDN services; and 4) obtain an independent assessment of non-traffic sensitive costs generated by ISDN services.

Respectfully submitted,

MICROSOFT CORPORATION

Jack Krumholtz /WHD

Jack Krumholtz
Law and Corporate Affairs Department
Microsoft Corporation
Suite 600
5335 Wisconsin Ave., N.W.
Washington, D.C. 20015

-- and --

Stanley M. Gorinson /WHD

Stanley M. Gorinson
William H. Davenport
Preston Gates Ellis & Rouvelas Meeds
1735 New York Ave., N.W.
Washington, D.C. 20006

Attorneys for Microsoft Corporation

January 31, 1997

EXHIBIT 1

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

RECEIVED

JUN 29 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

**IN THE MATTER OF
END USER COMMON LINE
CHARGES**

CC Docket No. 95-72

DOCKET FILE COPY ORIGINAL

COMMENTS OF MICROSOFT CORPORATION

**Jack Krumholtz
Law and Corporate Affairs Department
Microsoft Corporation
Suite 500
5335 Wisconsin Avenue, N.W.
Washington, D.C. 20015**

**Stanley M. Gerinson
Preston Gates Ellis & Rouvelas Meeds
1735 New York Avenue, N.W.
Washington, D.C. 20006**

Attorneys for Microsoft Corporation

June 29, 1995

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

RECEIVED
JUN 29 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**IN THE MATTER OF
END USER COMMON LINE
CHARGES**

CC Docket No. 95-72

COMMENTS OF MICROSOFT CORPORATION

Microsoft Corporation submits these comments in response to the Commission's Notice of Proposed Rulemaking released May 30, 1995. Integrated Systems Digital Network ("ISDN") technology is of great value in expanding the National Information Infrastructure ("NII"). Thus, it is essential that ISDN or other derived channel technologies should be priced so as to promote rather than retard usage. Accordingly, for the reasons we set out below, Microsoft urges the Commission to utilize the per facility approach set out in its NPRM (¶¶ 24-26) and to initiate a comprehensive review of whether access charges continue to make sense in a telecommunications environment where competition is increasing and, if so, how those charges should be recovered.

I. MICROSOFT'S INTEREST IN THIS PROCEEDING

As Pacific Bell noted to the Commission, its single line ISDN product underwent an 800% increase in 1994 and all ISDN products at least doubled growth in 1994.¹ These substantial

¹ Pacific Bell Petition for Waiver of Part 69-108 as Applied to Derived Channel Services such as ISDN, filed February 21, 1995.

increases reflect the growing residential and commercial demand for high speed access to the Internet and online digital information services. Still, the United States lags far behind many other countries in widespread deployment of ISDN.

Affordable ISDN would enable millions of Americans to benefit from new digital information services. For example, the Microsoft Network ("MSN"), which will debut later this year, will offer its customers access to our network services either via dialup modems or via ISDN. ISDN offers customers both faster connection (several seconds to establish the line versus 20-30 seconds via modem) as well as much higher data rates. We believe that customers will rely on ISDN to access MSN services at higher data rates so long as they are not penalized because of high or multiple subscriber line charges ("SLC").

II. DISCUSSION

A. The Current Access Charge Structure No Longer Makes Sense.

ISDN is an important interim technology that will serve as an early access ramp to the information highway. Accordingly, the issue of ISDN cost will be a factor in determining whether the NII is a freeway or a toll road. It is absolutely essential, in Microsoft's view, both as a significant user of ISDN services and as an information service supplier, that the cost of ISDN be kept as low as possible to promote the growth of ISDN, other derived channel technologies, and ultimately the NII.

The Commission's access charges are designed to recover a greater portion of non-traffic sensitive local loop costs assigned to the interstate jurisdiction from multi-line business customers. In a world without derived channel technologies, the cost of that "tax" is six dollars per month per line. In an ISDN environment, however, the result from a literal reading of the Commission's

existing rule is that the SLC increase dramatically -- *e.g.*, a user of a 24 channel ISDN interface would now have to pay an SLC of \$144. Most ISDN consumers will be unable to bear such significant rate increases with the result that this technology will be greatly underutilized.

As the Commission recognizes (NPRM ¶ 13), the interstate access market has changed dramatically since access charge rules were adopted. Competitive access providers, cable television companies and inter-exchange carriers are either in or on the way to entering the local telephone or interstate access market. As a result, local exchange carriers will face increasing competition. To the extent access costs are high because of regulatory fiat rather than economic reality, large users will simply seek to bypass the LEC facilities wherever it is practical to do so. Accordingly, since the marketplace and the technology used in that marketplace are both changing quite dramatically, it is much less likely that an access charge structure predicated on the existence of a monopoly at the local level continues to make sense. For example, the Commission assumes that if LECs are unable to recover NTS local loop costs from SLCs, they will seek to do so through carrier common line ("CCL") charges. To the extent IXCs can bypass the local exchange (*see, e.g.*, NPRM ¶ 13 and n.31), there are marketplace constraints on any CCL increase. The real question is whether the current system of access charges continues to make sense and, if so, how should those charges be imposed in a competitive rather than a monopoly environment.

B. The Commission Should Permit a Per-Facility Charge and Review the Access Charge Structure.

The Commission's proposed options are all arbitrary. The derived per-channel approach in essence penalizes innovation (NPRM ¶31). The intermediate options are nothing more than a splitting of the difference between users and carriers as apparently perceived by the Commission, but still do not grapple with the fundamental question of whether there should be any increase in access charges. Although the per facility approach may also be arbitrary in that it continues in place the per-line charge that existed before derived channel services were introduced into the access charge scheme, on balance, Microsoft believes it is the best. It is most likely to promote the use of ISDN and other derived channel services and thereby promote greater use of emerging information technologies and increase NII expansion. Thus, for the time being, the per-facility approach is in the public interest.

However, we also believe that the question of access charge regulation must be re-examined by the Commission. If competition is increasing rapidly, then market forces rather than government mandate, can and should regulate cost recovery. There is simply no need for the elaborate SLC and CCL regulatory requirement. Accordingly, we urge the Commission to re-examine the fundamental question of SLCs and CCLs to see if they will continue to be necessary in a more competitive marketplace.

Only once that question is answered should the Commission revisit the per-facility approach. Moreover, until that issue has been resolved, CCL charges would not be used to compensate for any reduced SLC revenues. As we would hope that this policy review could be completed in a reasonable period, this should not work a hardship on the LECs.

III. CONCLUSION

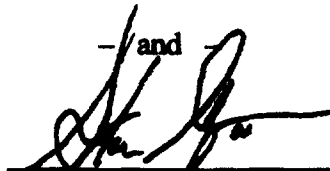
For the foregoing reasons, Microsoft respectfully recommends that the Commission adopt a per-facility approach for derived channel SLCs combined with a freeze on CCL increases pending the outcome of a general review of access charge regulation in a more competitive telecommunications environment.

Respectfully submitted,

MICROSOFT CORPORATION



Jack Krumholtz
Law and Corporate Affairs Department
Microsoft Corporation
Suite 500
5335 Wisconsin Avenue, N.W.
Washington, D.C. 20015

- and -


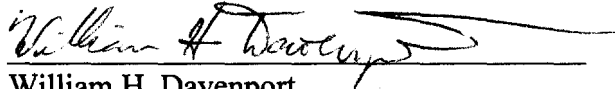
Stanley M. Gorinson
Preston Gates Ellis & Rouvelas Meeds
1735 New York Avenue, N.W.
Washington, D.C. 20006

Attorneys for Microsoft Corporation

June 29, 1995

CERTIFICATE OF SERVICE

I, William H. Davenport, do hereby certify that copies of Microsoft Corporation's *Amended* Comments in Response to the Commission's Notice of Proposed Rulemaking have been served on the parties listed below via hand delivery on this 31st day of January, 1997.


William H. Davenport

Chairman Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

Commissioner Susan B. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

Regina M. Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

ITS, Inc.
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Julius Genachowski
Legal Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

John Nakahata
Legal Advisor
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Jane Mago
Senior Legal Advisor
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

James L. Casserly
Senior Legal Advisor
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Lauren J. Belvin
Senior Advisor
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Rudolfo Baca
Legal Advisor
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

James W. Olson, Chief
Competition Division
Federal Communications Commission
1919 M Street, N.W.
Room 658
Washington, D.C. 20554